INDEX.

ACTION.

See JURISDICTION, E, 2.

ADMIRALTY.

See LIMITED LIABILITY.

ADULTERY.

See JURISDICTION, E, 1.

AGENCY.

See CONTRACT, 9, 11.
CORPORATION, 2.

ALASKA.

See COURTS OF THE UNITED STATES.

AMENDMENT.

See PRACTICE, 6.

APPEAL.

See PRACTICE, 2, 5.

ASSUMPSIT.

See CONTRACT, 2.

CASES AFFIRMED.

1. *Pullman's Palace Car Co.* v. *Pennsylvania*, 141 U. S. 18. *Pullman's Palace Car Co.* v. *Hayward*, 36.
2. *Western Union Telegraph Co.* v. *Attorney General of Massachusetts*, 125 U. S. 530, followed. *Massachusetts* v. *Western Union Telegraph Co.*, 40.
3. The same questions are presented here that were determined in *McAllister* v. *United States*, 141 U. S. 174, and it is affirmed on the authority of that case. *Wingard* v *United States*, 201.
4. *Delano* v. *Butler*, 118 U. S. 634, and *Aspinwall* v. *Butler*, 133 U. S. 595, affirmed and applied. *Pacific National Bank* v. *Eaton*, 227.

5. *Pacific National Bank* v. *Eaton*, 141 U. S. 227, affirmed and applied. *Thayer* v. *Butler*, 234.
6. *Pacific National Bank* v. *Eaton*, 141 U. S. 227, and *Thayer* v. *Butler*, 141 U. S. 234, affirmed and applied to this case. *Butler* v. *Eaton*, 240.
7. The decision below in these cases is reversed on the authority of *Fowler* v. *Equitable Trust Co.*, 141 U. S. 384. *Fowler* v. *Equitable Trust Co.* (2), 408.
8. It being conceded that this case comes within the rules laid down in *Ackley School District* v. *Hall*, 113 U. S. 135, and in *New Providence* v. *Halsey*, 117 U. S. 336, this court adheres to the doctrines enunciated in those cases. *Cross* v *Allen*, 528.
9. *Red River Cattle Co.* v. *Needham*, 137 U. S. 632, affirmed, and applied to the circumstances of this case. *Rector* v. *Lipscomb*, 557.
10. *Ferry* v. *King County*, 141 U. S. 668, followed. *Ferry* v. *King County*, 673.
11. *McLish* v. *Roff*, 141 U. S. 661, affirmed and followed. *Chicago, St. Paul &c. Railway* v. *Roberts*, 690.
12. *Little* v. *Bowers*, 134 U. S. 547, followed. *Singer M'f'g Co.* v. *Wright*, 696.

See LACHES,
NATIONAL BANK, 6.

CASES DISTINGUISHED.

Barrow v. *H.* 39 U. S. 80; *Johnson* v. *Waters*, 111 U. S. 640; and *Arrowsmith* v. *Gleason*, 129 U. S. 86, distinguished from *Nougue* v *Clapp*, 101 U. S. 551, and *Graham* v. *Boston, Hartford & Erie Railroad*, 118 U. S. 161. *Marshall* v. *Holmes*, 589.

See PUBLIC LAND, 4.

CHINA, TREATIES WITH.

See JURISDICTION, B, 1, 2.

CIRCUIT COURTS OF APPEALS.

See JURISDICTION, B.

COMMON CARRIER.

See LIMITED LIABILITY.

CONFLICT OF LAW

See USURY, 1.

CONSTITUTIONAL LAW

A. OF THE UNITED STATES.

1. A statute of a State, imposing a tax on the capital stock of all corporations engaged in the transportation of freight or passengers within the State, under which a corporation of another State, engaged in running railroad cars into, through and out of the State, and having at all

times a large number of such cars within the State, is taxed by taking as the basis of assessment such proportion of its capital stock as the number of miles of railroad over which its cars are run within the State bears to the whole number of miles in this and other States over which its cars are run, does not, as applied to such a corporation, violate the clause of the Constitution of the United States granting to Congress the power to regulate commerce among the several States. *Pullman's Palace Car Co.* v. *Pennsylvania*, 18.

2. Following *Pullman's Palace Car Co.* v. *Pennsylvania*, 141 U. S. 18, the judgment of the court below is affirmed. *Pullman's Palace Car Co.* v. *Hayward*, 36.
3. The tax imposed by the statutes of Massachusetts, (Pub. Stat. c. 13, §§ 40, 42,) requiring every telegraph company owning a line of telegraph within the State to pay to the state treasurer "a tax upon its corporate franchise at a valuation thereof equal to the aggregate value of the shares in its capital stock," deducting such portion of that valuation as is proportional to the length of its lines without the State, and deducting also an amount equal to the value of its real estate and machinery subject to local taxation within the State, is in effect a tax upon the corporation on account of property owned and used by it within the State; and is constitutional and valid, as applied to a telegraph company incorporated by another State, and which has accepted the rights conferred by Congress by § 5263 of the Revised Statutes. *Massachusetts* v. *Western Union Telegraph Co.*, 40.
4. The act of the legislature of Kentucky of March 2, 1860, "to regulate agencies of foreign express companies," which provides that the agent of an express company not incorporated by the laws of that State shall not carry on business there without first obtaining a license from the State, and that, preliminary thereto, he shall satisfy the auditor of the State that the company he represents is possessed of an actual capital of at least $150,000, and that if he engages in such business without license, he shall be subject to fine, is a regulation of interstate commerce so far as applied to a corporation of another State engaged in that business, and is, to that extent, repugnant to the Constitution of the United States. *Crutcher* v. *Kentucky*, 47.
5. The act of Virginia of March, 1867, (now repealed,) as set forth in c. 86, Code of Virginia, ed. 1873, providing that all flour brought into the State and offered for sale therein shall be reviewed, and have the Virginia inspection marked thereon, and imposing a penalty for offering such flour for sale without such review or inspection, is repugnant to the commerce clause of the Constitution, because it is a discriminating law, requiring the inspection of flour brought from other States when it is not required for flour manufactured in Virginia. *Voight* v. *Wright*, 62.
6. A contract with a municipal corporation, whereby the corporation grants to the contractor the sole privilege of supplying the municipality with

water from a designated source for a term of years, is not impaired, within the meaning of the contract clause of the Constitution, by a grant to another party of a privilege to supply it with water from a different source. *Stein* v. *Bienville Water Supply Co.*, 67

See COURTS OF THE UNITED STATES;
JUDGMENT, 2;
JURISDICTION, A, 13.
LIMITED LIABILITY.

CONTRACT.

1. Where a contract with a municipal corporation is susceptible of two meanings, the one restricting and the other extending the powers of the corporation, that construction is to be adopted which works the least harm to the State. *Stein* v. *Bienville Water Supply Co.*, 67.
2. When goods belonging to one party pass into the possession of another surreptitiously and without the knowledge of the latter, no contract of purchase is implied, and if the agent of the latter, who is a party to the surreptitious transfer, sells the goods and puts the proceeds into his principal's possession, but without his knowledge, the principal is not liable in an action for goods sold and delivered, whatever liability he may be under in an action for money had and received. *Schutz* v *Jordan*, 213.
3. In determining whether an alleged promise is or is not a promise to answer for the debt of another, the following rules may be applied. (1) if the promissor is a stranger to the transaction, without interest in it, the obligations of the statute are to be strictly upheld, (2) but if he has a personal, immediate and pecuniary interest in a transaction in which a third party is the original obligor, the courts will give effect to the promise. *Davis* v. *Patrick*, 479.
4. The real character of a promise does not depend altogether upon form of expression, but largely upon the situation of the parties, and upon whether they understood it to be a collateral or direct promise. *Ib.*
5. When a contract is couched in terms which import a complete legal obligation, with no uncertainty as to the object or extent of the engagement, it is (in the absence of fraud, accident or mistake) conclusively to be presumed that the whole engagement of the parties and the extent and manner of their undertaking were reduced to writing. *Seitz* v *Brewers' Refrigerating Co.*, 510.
6. Whether the written contract in this case fully expressed the terms of the agreement between the parties was a question for the court; and silence on a point that might have been embodied in it does not open the door to parol evidence in that regard. *Ib.*
7. When a known, described and definite article is ordered of a manufacturer, although it be stated by the purchaser to be required for a particular purpose, yet, if the known, described and definite thing be

actually supplied, there is no warranty that it shall answer the particular purpose intended by the buyer. *Ib.*

c. Under a written contract J. was to build a road for a railroad company for $29,000, and to have possession of the road and run and use it till he should be paid. He completed the road, but was not paid, and, while in possession, was forcibly ejected by the company. In an action against it for forcible entry and detainer he had judgment. Meantime, another company purchased the road, but before that, by a written agreement between J. and the first company, the amount due him under the contract was fixed at $25,000. The judgment was affirmed by this court, but before any judgment was entered on its mandate, the second company tendered to J. the $25,000 and interest, which he refused, and it then filed a bill in equity, for a perpetual injunction against J. from taking possession of the road, and obtained an order for a temporary injunction, on paying the money tendered, into a depository of the court, to its credit, with the right to J. to receive the money when he pleased. J. defended the suit on the ground that the agreement as to the $25,000 was conditional and temporary and that the condition had not been fulfilled. The court decreed that on the plaintiff's paying into court the costs of the suit, and $1000 for the expenses of J. in preparing to take possession of the road, a perpetual injunction should issue. Both parties appealed. *Held*, (1) The agreement as to the $25,000 was binding on J., and its terms could not be varied, by showing a contemporaneous verbal understanding that the $25,000 was to be paid in cash in a limited time, (2) The tender and the payment into court changed the condition of affairs, and the right of J. to possession of the road ceased, (3) The case was distinguishable from that of *Ballance* v. *Forsyth*, 24 How. 183, and like that of *Parker* v *The Judges*, 12 Wheat. 561. (4) The appeal by the plaintiff did not involve an amount sufficient to give this court jurisdiction. *Johnson* v. *St. Louis, Iron Mountain &c. Railway*, 602.

9. A contract of agency, which leaves the agent free to terminate his relations with the principal upon reasonable notice, must be construed to confer the same right upon the principal, unless provisions to the contrary are stipulated. *Willcox & Gibbs Sewing Machine Co.* v. *Ewing*, 627.

10. A provision in a contract, otherwise terminable upon reasonable notice, that a violation of the spirit of the agreement shall be a sufficient cause for its abrogation, does not imply that it can be abrogated only for sufficient cause. *Ib.*

11. The plaintiff in error by contract appointed the defendant in error "its exclusive vendor" for its machines in a defined territory; agreed to sell the machines to him at a large discount from its retail New York prices; and not to "knowingly supply its goods at a discount to go within that territory." The defendant in error accepted the appoint-

ment; agreed to pay for the machines at the discount rate; not to sell them below the said retail rate, and not to solicit orders within the territory of other agents. *Held*, that the agreement constituted him agent within the defined territory. *Ib.*

See CONSTITUTIONAL LAW, 6;
EQUITY, 1,
EVIDENCE, 5, 6,
INSURANCE,
LACHES,
LOCAL LAW, 2;
PAYMENT.

CORPORATION.

1. The degree of care required of directors of corporations depends upon the subject to which it is to be applied, and each case is to be determined in view of all the circumstances. *Briggs* v. *Spaulding*, 132.

2. Directors of a corporation are not insurers of the fidelity of the agents whom they appoint, who become by such appointment agents of the corporation, nor can they be held responsible for losses resulting from the wrongful acts or omissions of other directors or agents, unless the loss is a consequence of their own neglect of duty. *Ib.*

See CONSTITUTIONAL LAW, 1,
LIMITED LIABILITY, 7.
NATIONAL BANK.

COURT AND JURY.

See EVIDENCE, 4,
PAYMENT, 2.

COURTS OF A STATE.

See JUDGMENT, 2.
JURISDICTION, A, 7

COURTS OF THE UNITED STATES.

A person appointed by the President, by and with the advice and consent of the Senate, under the provisions of the act of May 17, 1884, 23 Stat. 24, c. 53, § 3, to be the judge of the District Court of the District of Alaska, is not a judge of a court of the United States within the meaning of the exception in section 1768 of the Revised Statutes, relating to the tenure of office of civil officers, and was, prior to its repeal, subject to removal before the expiration of his term of office by the President, in the manner and upon the conditions set forth in that section. *McAllister* v. *United States*, 174.

See JURISDICTION.

CRIMINAL LAW

See JURISDICTION, E, 1.

CUSTOMS DUTY.

1. In fixing the classification of goods for the payment of duties, the name or designation of the goods is to be understood in its known commer-

cial sense, and their denomination in the market will control their classification without regard to their scientific designation, the material of which they may be made, or the use to which they may be applied. *American Net & Twine Co.* v. *Worthington*, 468.

2. Gilling twine, when imported as gilling, for the manufacture of gill nets, is liable only to the duty of 25 per cent under the act of March 3, 1883, 22 Stat. 488. *Ib.*
3. Statements made in Congress by the promoters of a customs-act are inadmissible as bearing upon its construction, but the proceedings therein may be referred to to inform the court of the reasons for fixing upon a specific rate of duty *Ib.*
4. Where a customs-act imposes a duty upon an article by a specific name, general terms in the act, though sufficiently broad to cover it, are not applicable to it. *Ib.*
5. In cases of doubt in the construction of a customs-act, the courts resolve the doubt in favor of the importer. *Ib.*

DAMAGES.

See PATENT FOR INVENTION, 11 to 18;
PRACTICE, 3.

DISTRICT JUDGE OF ALASKA.

See COURTS OF THE UNITED STATES.

EQUITY.

1. An admitted or clearly established misapprehension of law in the making of a contract creates a basis for the interference of a court of equity, resting on its discretion, and to be exercised only in unquestionable and flagrant cases. *Griswold* v. *Hazard*, 260.
2. Whether laches is to be imputed to a party seeking the aid of a court of equity depends upon the circumstances of the particular case. *Ib.*
3. In this case it is held on the evidence that the bond given by Griswold in the *ne exeat* proceeding conditioned that the defendant in that proceeding should "abide and perform the orders and decrees" of the court, was executed by him under such an apprehension of the obligations in law assumed by him in executing and delivering it, as to make it the duty of a court of equity to reform it so as to make him liable for the penal sum named, only in the event that the principal failed to appear and become subject to the orders and decrees of the court; but that, the defendant in the suit in which the *ne exeat* was issued having died, and such a decree being therefore inappropriate and Griswold being guilty of no laches, a decree should be entered perpetually enjoining the prosecution of any action, suit or proceeding to make him liable in any sum on or by reason of said bond. *Ib.*
4. D. was sued in the Supreme Court of Rhode Island by stockholders in the Credit Mobilier for an accounting and payment of what might be

found due on the accounting, for securities and moneys coming into his hands as president of the Credit Mobilier. The receiver of that company in Pennsylvania released him from such liability. The Supreme Court of Rhode Island would not allow that release to be interposed as a defence. *Held*, that the error, if any, in this respect could not be corrected by bill in equity filed by a surety on a bond given to release D. when arrested on *ne exeat* proceedings in that Rhode Island suit. *Ib.*

5. A holder of the legal title to real estate who has no equitable interest therein, cannot, by his act done without the knowledge or consent of the holder of the equitable title, who is in possession of and residing on the premises, claiming title, rescind a completed settlement of a mortgage debt on the premises so as to bind the holder of the equitable title, and prevent him from setting up defences which would otherwise be open to him. *McLean* v. *Clapp*, 429.
6. A decree of foreclosure and sale, made by a Circuit Court, on a railroad mortgage, provided that the purchaser should pay off all claims incurred by the receiver, and that all such claims should be barred unless presented within six months after the confirmation of the sale. On the sale the property was bought by the appellants. The decree confirming the sale provided that a deed should be given, and the purchasers should take the property, aad the deed should recite that they took it, subject to all claims incurred by the receiver. After the six months had expired, the appellee filed a petition to recover damages for an injury sustained by him, as a passenger on the road, through the negligence of the employes of the receiver. The expiration of the six months was set up as a bar to the claim. It did not appear that the purchasers objected to the terms of the decree of confirmation, or appealed to this court from that decree. *Held*, that the Circuit Court had discretion to abrogate the six months' limitation, and to decree that the purchasers should pay the claim, as the receiver had been discharged. *Olcott* v. *Headrick*, 543.
7. The plaintiff in his bill set up in himself a legal title to real estate derived from the State of Louisiana to which it had been listed as swamp or overflowed lands; averred that the respondents claimed the same land under certain old French grants which had been recognized by the Land Office as valid, and prayed that he might be declared to be the owner and put in possession of the premises, and have an accounting for rents and profits. *Held*, that on these averments he had a plain, adequate and complete remedy at law, and that the bill must be dismissed. *Smyth* v. *New Orleans Canal and Banking Co.*, 656.

See CONTRACT, 8,
LACHES,
RAILROAD,
REMOVAL OF CAUSES.

EVIDENCE.

1. The objection that the record of proceedings in a court of record offered in evidence should not be received in evidence, on the ground that the transcript was incomplete, or was improperly authenticated, should be raised in the court below; and if not raised there cannot be taken here for the first time. *Carpenter* v *Strange*, 87.
2. When the defence in an action for goods sold and delivered to an agent of the defendant is a denial that any such sale was made, the burden is on the plaintiff throughout the case to prove every essential part of the transaction, including the authority of the alleged agent to make the alleged purchase in the manner alleged. *Schutz* v. *Jordan*, 213.
3. The presumption that a letter properly directed and mailed reached its destination at the proper time and was duly received by the person to whom it was addressed is a presumption of fact, subject to control and limitation by other facts. *Ib.*
4. When, in an action to recover on a contract, testimony is admitted without objection, showing the alleged contract to have been made, but on a day different from that averred in the declaration, and the court directs a verdict for the defendant without amendment of the declaration, such ruling is not erroneous by reason of the variation. *Davis* v. *Patrick*, 479.
5. Parol testimony is admissible to show the circumstances under which a written instrument was executed, or that it was, in fact, without consideration. *Fire Insurance Association* v *Wickham*, 564.
6. Circumstances attending the execution of a receipt in full of all demands, may be given in evidence to show that by mistake it was made to express more than was intended, and that the creditor had, in fact, claims that were not included. *Ib.*

See CONTRACT, 6, INSURANCE;
CUSTOMS DUTY, 3, WITNESS.

EXCEPTION.

See LOCAL LAW, 2.

EXECUTOR AND ADMINISTRATOR.

See WILL.

FACT.

This case is affirmed on the facts. *Evans* v. *State Bank*, 107.

FEE.

See TRUST.

FOOD INSPECTION LAWS.

See CONSTITUTIONAL LAW, A, 5.

FRAUDS, STATUTE OF.

See CONTRACT, 3, 4.

FRAUDULENT CONVEYANCE.

A conveyance by a debtor in Texas of his real estate there, made with intent to delay, hinder or defraud his creditors, being void as to the latter under the statutes of that State, a judgment sale and transfer of such property, in an action commenced by the levy of an attachment upon it as the property of the debtor, made after the fraudulent sale, is upheld in this case as against a *bona fide* purchaser from the fraudulent grantee, taking title after the levy of the attachment. *Thompson* v. *Baker*, 648.

GOODS SOLD AND DELIVERED.

See CONTRACT, 2,
EVIDENCE, 2.

HUSBAND AND WIFE.

See LOCAL LAW, 1.

INDIAN.

See JURISDICTION, E, 1, 2.

ILLINOIS.

See TAX SALE;
TRUST;
USURY, 1 to 5.

INSURANCE.

The plaintiff took out fire insurance policies upon a vessel in 10 companies to the amount of $40,000 in all. The vessel took fire, and, in order to save it, it was scuttled and sunk, and the fire thus extinguished. It was then raised, taken to port and repaired. The loss by fire, exclusive of the expense of raising the vessel, etc., was $15,364.78. The owner made claim upon the insurers for this amount for "loss nd damage by fire and water as per agreement," stating that he would make further claims "for expenses of raising the propeller," and was "preparing the statement of such expenses to submit with his subsequent claim." The companies declined to pay such subsequent claim, but paid in advance the amount of the loss by fire so stated, taking receipts, expressed to be in full of all claims for loss or damage by fire, and in which it was further stated that the policies were cancelled and surrendered. The parties further signed a paper in which "the loss and damage by fire" was certified at that aggregate amount, "payable without discount upon presentation," and the amount was apportioned among the several companies. In an action brought by

the owner to recover from the companies the amount of the claim for raising and saving the vessel, some $15,000, it was *Held*, (1) That parol evidence was admissible to explain the receipts, and to show that they were not intended to cover the claim for raising, etc., (2) That the paper so signed by the parties was not in the nature of a contract on the part of the owner. *Fire Insurance Association* v. *Wickham*, 564.

INTEREST.

See JUDGMENT, 1,
PATENT FOR INVENTION, 16,
USURY, 1.

JUDGMENT.

1. Upon rendering a decree for the plaintiff in a suit in equity, brought in behalf of a State, pursuant to statute, to recover the amount of a tax with interest thereon at the rate of twelve per cent until paid, a sum tendered and paid into court by the defendant, for part of that amount and interest thereon at that rate, is to be applied to the payment of both principal and interest of the sum so admitted to be due, interest at the rate of twelve per cent is to be computed on the rest of the principal until the date of the decree; and from that date interest on the lawful amount of the decree is to be computed at the ordinary rate of six per cent only, notwithstanding the final disposition of the case is delayed by appeal. *Massachusetts* v. *Western Union Telegraph Co.*, 40.
2. In an action in the Supreme Court of New York (the court having jurisdiction of the parties) between two sisters, the defendant being sued in her representative capacity as testatrix of her father's will, the matters in controversy were (1) whether the plaintiff had accepted or rejected a provision made for her by her father's will, (2) whether she was entitled to recover from her father's estate an amount claimed to be due on account of a fund which came to him as trustee for her, and which he had never accounted for; and (3) whether a certain conveyance of real estate in Tennessee made by the father in his lifetime to the defendant should be adjudged to be fraudulent, and be vacated. That court, after hearing the parties, adjudged (1) that the plaintiff had not accepted the provision so made for her; (2) that the plaintiff was entitled to recover the full amount so claimed, and (3) that the deed was "absolutely null and void from the beginning," so far as it affected the testator's said indebtedness. A litigation in equity then took place in Tennessee, in which the plaintiff and defendant in New York were, respectively, plaintiff and defendant. There were other parties, whose presence was not material to the points here decided. This litigation resulted in the Supreme Court of Tennessee deciding (1) That the plaintiff had elected to take the share so devised to her; (2) that having so elected she was not entitled to recover on her claim, (3) that the Supreme Court of New York was without power

to adjudge the conveyance by the testator to the defendant of lands in Tennessee fraudulent and void, or to annul the same. *Held*.

(1) That this decree did not give to the judgment of the Supreme Court of the State of New York the full faith and credit to which it was entitled under the Constitution as to the 1st and 2d points so decided.

(2) That, as to the 3d point, the courts of New York had no power to decree that a deed of land in Tennessee was null and void. *Carpenter* v. *Strange*, 87

JURISDICTION.

A. OF THE SUPREME COURT.

1. A party cannot, by proceedings in the Circuit Court, waive a question of the jurisdiction of that court, so as to prevent its being raised and passed upon here. *Parker* v. *Ormsby*, 81.
2. This case is dismissed by the court because the amount involved is not sufficient to give it jurisdiction. *Reynolds* v. *Burns*, 117.
3. The only question open in a case brought up under the act of February 25, 1889, 25 Stat. 693, c. 236, where the judgment does not exceed $5000, is the question of jurisdiction of the court below. *St. Louis & San Francisco Railway Co.* v. *McBride*, 127
4. Although it is true as a general rule that where judgment goes for the defendant, the amount of the plaintiff's claim is the test of jurisdiction, this rule is subject to the qualification that the demand shall appear to have been made in good faith for such amount; and if it appear clearly from the whole record that under no aspect of the case the plaintiff could recover the full amount of his claim, this court will decline to assume jurisdiction of the case. *Gorman* v. *Havird*, 206.
5. A pleading presenting only a question of error in a judgment of a state court does not go to the jurisdiction. *Griswold* v. *Hazard*, 260.
6. The appeal was dismissed as to the claims of the appellees, which did not exceed $5000. *Kneeland* v. *Luce* (2), 491.
7. This court is bound to assume that decisions of state courts on matters of state law have been made after thorough consideration, and that they embody the deliberate judgment of the court. *Cross* v. *Allen*, 528.
8. Where an action at law was tried by a District Court without a jury, which found the facts and conclusions of law, and entered judgment for the plaintiff thereon, and a bill of exceptions was signed, which stated that the defendant moved the court to direct a verdict for him, on the ground that, as matter of law, no action could be maintained by the plaintiff, and the Circuit Court, on a writ of error affirmed the judgment, and the defendant then sued out a writ of error from this court. *Held*, (1) The Circuit Court could not properly consider any matter raised by the bill of exceptions, nor can this court do so, because the trial was not by a jury nor on an agreed statement of facts; (2) all that the Circuit Court could do was to affirm the judgment of

the District Court, and all that this court can do is to affirm the judgment of the Circuit Court, as the latter court had jurisdiction and this court has it. *Rogers* v. *United States*, 548.

9. Nearly two years after the entry of a decree dismissing a bill in equity relating to title to real estate, the complainant, without notice to the respondent, filed his affidavit to show that its value was more than $5000, appealed to this court, and the appeal was allowed below and was entered in this court. The respondent thereupon filed counter affidavits in the court below and, after notice to the complainant, moved to set aside the appeal upon the ground that the value of the property was shown to be less than $5000. The complainant was present at the hearing of this motion, which resulted in an order vacating the order allowing the appeal. The respondent as appellee in this court, on all these facts as shown by the original and supplemental records, moved to dismiss the appeal for want of jurisdiction. *Held*, that, under the circumstances, it was no more than right that this court should consider the subsequent affidavits, and that they showed that the amount in controversy was not sufficient to give this court jurisdiction, and that therefore the appeal must be dismissed. *Rector* v. *Lipscomb*, 557.

10. Under section 5 of the act of March 3, 1891, c. 517, 26 Stat. 826, "to establish Circuit Courts of Appeal," etc., the appeal or writ of error which may be taken "from the existing Circuit Courts direct to the Supreme Court," "in any case in which the jurisdiction of the court is in issue," can be taken only after final judgment, when the party against whom it is rendered must elect whether he will take his writ of error or appeal to this court upon the question of jurisdiction alone, or to the Circuit Court of Appeals upon the whole case. *McLish* v. *Roff*, 661.

11. In an action against the county treasurer of a county in the State of Washington and the sureties on his official bond to recover moneys received by him officially, rulings of the state court that his settlements with the county commissioners were not conclusive, that that body acted ministerially in settling with him and could not absolve him from the duty to account and pay over, and that the denial by the trial court of an order to furnish a bill of particulars would not be disturbed in the absence of anything indicating that the defendants had been prejudiced thereby, do not deny the validity of the territorial code enacted under the authority of Congress, and confer no jurisdiction in error upon this court. *Ferry* v. *King County*, 668.

12. The validity of a statute is not drawn in question every time that rights claimed under it are controverted, nor is the validity of an authority every time an act done by such authority is disputed. *Ib.*

13. In a suit brought in a state court of Kentucky by the city of Henderson against the Henderson Bridge Company, to recover for taxes assessed by the city on the bridge of the company, which spanned the Ohio

River at the city, the Court of Appeals of the State held that the city, as a taxing district, could tax the property of the company, and that, under an ordinance of the city, accepted by the company, the city acquired a contract right to tax the bridge to low-water mark on the Indiana shore, it being within the city limits, in consideration of rights and privileges granted to the company by the ordinance. On a motion to dismiss a writ of error from this court, sued out by the company: *Held*, (1) that although it was claimed in the pleadings, by the company, that the taxing ordinance impaired the obligation of a prior contract with the company, yet as the decision of the Court of Appeals was based wholly on the ground that the proper interpretation of the ordinance first above referred to was that the company voluntarily agreed that the bridge should be liable to taxation, and that did not involve a Federal question, and was broad enough to dispose of the case, without reference to any Federal question, and this court could not review the construction which was given by the state court to the ordinance, as a contract, in view of the constitution and laws of Kentucky, the writ of error must be dismissed, (2) that the taxation of the bridge was not a regulation of commerce among the States, or the taxation of any agency of the Federal government. *Henderson Bridge Co.* v *Henderson*, 679.

14. This court has no jurisdiction to review in error or on appeal, in advance of the final judgment in the cause on the merits, an order of a Circuit Court of the United States remanding the cause to the state court from which it had been removed into the Circuit Court. *Chicago, St. Paul &c. Railway Co.* v. *Roberts*, 690.

15. The payment, whether voluntary or compulsory, of a tax, to prevent the payment of which a bill in equity has been filed, leaves no issue for the court to pass upon in that case. *Singer M'f'g Co.* v. *Wright*, 696.

See EVIDENCE, 1, PRACTICE, 1,
NATIONAL BANK, 10; RECEIVER, 3.

B. OF CIRCUIT COURTS OF APPEALS.

1. Only questions of gravity and importance should be certified to this court by the Circuit Courts of Appeals, under the provisions of the act of March 3, 1891, 26 Stat. 828, c. 517, § 6. *Lau Ow Bew, Petitioner*, 583.

2. Whether the Chinese restriction acts, in the light of the treaties between the United States and China, apply to a Chinese merchant, domiciled in the United States, who temporarily leaves the country for purposes of business or pleasure, *animo revertendi*, is such a question of gravity and importance. *Ib.*

C. OF CIRCUIT COURTS OF THE UNITED STATES.

1. In a suit by the assignee of a promissory note payable to the order of the payee, where the jurisdiction of the Circuit Court depends upon

the citizenship of the parties, it must appear affirmatively in the record that the payee could have maintained the action on the same ground. *Parker* v. *Ormsby*, 81.

2. When the pleadings in an action in a Circuit Court of the United States fail to show averments of diverse citizenship necessary to give the court jurisdiction, the fault cannot be cured by making such an averment in a remitter by the plaintiff of a portion of the judgment. *Denny* v. *Pironi*, 121.
3. While it is not necessary that the essential facts, necessary to give a Circuit Court jurisdiction on the ground of diverse citizenship, should be averred in the pleadings, they must appear in such papers as properly constitute the record on which judgment is entered, and not in averments which are improperly and surreptitiously introduced into the record for the purpose of healing a defect in this particular. The cases on this subject reviewed. *Ib.*
4. When a defendant sued in a Circuit Court of the United States appears and pleads to the merits, he waives any right to challenge thereafter the jurisdiction of the court on the ground that the suit has been brought in the wrong district. *St. Louis & San Francisco Railway Co.* v. *McBride*, 127
5. When, in pursuance of the jurisdiction conferred by the laws of the United States, a Circuit Court of the United States takes possession of the property of a defendant, situated within a State, and proceeds to final decree, determining the rights of all parties to that property, its decree is not superseded and its jurisdiction subsequently ended by reason of subsequent proceedings in the courts of the State looking to the administration of that property in accordance with the laws of the State. *Leadville Coal Co.* v. *McCreery*, 475.
6. A decree in such case, determining the claims of all creditors and their right to share in the distribution of the property, is final as to all who had notice and knowledge of the proceedings. *Ib.*
7. In this case there were no irregularities in the proceedings which can be challenged here. *Ib.*
8. The transfer of an overdue note and mortgage for a valuable consideration to a *bona fide* purchaser, is not a collusive transaction which prevents the transferee from maintaining an action upon them, under the provisions of the act of March 3, 1875, 18 Stat. 470, c. 137, § 1, although made to make a case to be tried in a Federal Court. *Cross* v. *Allen*, 528.

See CASES AFFIRMED, 8, JURISDICTION, A, 8,
EQUITY, 6, REMOVAL OF CAUSES.

D. OF DISTRICT COURTS OF THE UNITED STATES.

See COURTS OF THE UNITED STATES;
JURISDICTION, A, 8.

E. OF TERRITORIAL COURTS.

A member of the Cherokee Nation, committing adultery with an unmarried woman within the limits of its Territory, is amenable only to the courts of the Nation. *Mayfield, In re*, 107.

In the Indian Territory a right of action survives against a railroad company inflicting injuries upon a passenger which result in death. *St. Louis & San Francisco Railway Co.* v. *McBride*, 127

LACHES.

Grymes v *Sanders*, 93 U. S. 55, affirmed and applied to the point that where a party desires to rescind a contract upon the ground of mistake or fraud, he must, upon discovery of the facts, at once announce his purpose and adhere to it, and that if he be silent, and continue to treat the property as his own, he will be held to have waived the objection, and will be conclusively bound by the contract, as if the mistake or fraud had not occurred. *McLean* v. *Clapp*, 429.

See EQUITY, 2;
LIMITATION, STATUTES OF, 2.

LIMITATION, STATUTES OF.

1. The payment by the principal debtor, after the death of his wife, of interest upon a note, signed by him alone, but secured by a mortgage upon her separate real estate executed by her, operates in Oregon to keep alive the lien upon the property for the security of the mortgage debt, as against the statute of limitations of that State. *Cross* v. *Allen*, 528.
2. So long as demands secured by a mortgage are not barred by the statute of limitations, there can be no laches in prosecuting a suit upon the mortgage to enforce them. *Ib.*

See EQUITY, 6,
LOCAL LAW, 2;
NATIONAL BANK, 12.

LIMITED LIABILITY.

1. The law of limited liability is part of the maritime law of the United States, and is in force upon navigable rivers above tide water, and applies to enrolled and licensed vessels exclusively engaged in commerce on such a river. *Garnett, In re*, 1.
2. The provisions of § 4283 of the Revised Statutes relieving the owner of a vessel from liability for a loss occasioned without his privity or knowledge, apply to an insurance company, to which, as insurer, a vessel has been abandoned, and which was charged with negligence in causing the vessel to be so towed that she sank and became a total loss, and the life of an employé on board of her was lost. *Craig* v. *Continental Insurance Co.*, 638.

3. The identity of the vessel was not lost, she being officered and manned and having on board a cargo. *Ib.*
4. The provisions of § 4283 apply to cases of personal injury and death. *Ib.*
5. The extinguishment of liability may be availed of as matter of law, on the facts, in a suit to recover for the death of the employé. *Ib.*
6. The provisions of the statute apply to a vessel used on the Great Lakes, she not being "used in rivers or inland navigation," within the meaning of § 4289. *Ib.*
7. The insurer being a corporation, the privity or knowledge of a person who was alleged to have been guilty of the negligence, and who was not a managing officer of the corporation, or employed directly by it, and whose powers were no greater than those of the master of a vessel, was not the privity or knowledge of the corporation. *Ib.*

LETTER.

See EVIDENCE, 3.

LOCAL LAW

1. Under the constitution and laws of Oregon, in force when these contracts were made, a married woman could bind her separate property for the payment of her husband's debts. *Cross* v. *Allen*, 528.
2. An action was brought upon three promissory notes with interest payable annually, each providing that if not paid when due it was to bear the rate of interest of the principal, "it being expressly agreed that in default of payment of interest when due the principal is to become due and collectible." Each note recited the fact that it was secured by a deed of trust executed to a named trustee on certain described property. The deed described the notes and declared. "provided, however, it is agreed that if at any time said interest shall remain unpaid for as much as ninety days after the same shall become due and payable, then the whole debt as well as the interest shall become and be due and payable, and further it is understood and agreed that if said note first falling due shall remain unpaid thereafter for as much as six months, then the whole debt is to be and become due and payable, and this trust, in either event, to be executed and foreclosed, at the option of said third party." It also contained a clause to the effect that if the money due on the notes was not paid "according to the tenor and effect of said notes in hand, and according to the terms, stipulations and agreements of this instrument," the deed should remain in force, and the trustee, or in the event of his death or refusal to act, "then at the request of the holder of said notes, the sheriff may proceed to sell said described property, or any part thereof, at public vendue, to the highest bidder for cash, and shall receive the proceeds of said sale, out of which shall be paid, first, the costs and expenses of executing this trust, including compensation to said trustee, or said sheriff for his services, and next to the

said third party or holder of said note whatever sum of money may be due thereon, and the remainder, if any, shall be paid to the said parties of the first part, or their legal representatives." The statute of Texas provided that "actions for debt where the indebtedness is evidenced by or founded upon any contract in writing, must be commenced and prosecuted within four years after the cause of action accrued, and not afterwards." The case was heard by the court, and a general finding made. No bill of exceptions were signed. *Held*, (1) The error in this case was one of law, apparent on the record, and need not have been presented by bill of exceptions; (2) Construing the notes and the deeds as contemporaneous agreements, relating to the same subject matter, the limitation of four years under the law of Texas ran from the dates named in the respective notes, as the dates of maturity, and not from the date of the default in the payment of interest; otherwise, if the option given to the payee or holder by the deed of trust, to make them due upon such default, had been exercised by the payee or the holder. *Moline Plow Co.* v. *Webb*, 616.

Illinois. *See* TAX SALE:
TRUST;
USURY.

Kentucky. *See* CONSTITUTIONAL LAW, A, 4.

Massachusetts. *See* CONSTITUTIONAL LAW, A, 3.

New York. *See* NATIONAL BANK, 11, 12.

Oregon. *See* LIMITATION, STATUTES OF, 1.

Pennsylvania. *See* CONSTITUTIONAL LAW, A, 1.

Texas. *See* FRAUDULENT CONVEYANCE.

Virginia. *See* CONSTITUTIONAL LAW, A, 5.

MANDAMUS.

A writ of mandamus does not lie from this court to the judges of the Supreme Court f a State, directing them to restore to office an attorney and counsellor whom that court had disbarred, and to vacate the order of disbarment. *In re Green*, 325.

MAILS.

See EVIDENCE, 3.

MARITIME LAW

See LIMITED LIABILITY.

MARRIED WOMAN.

See LIMITATION, STATUTE OF, 1,
LOCAL LAW, 1.

MISTAKE OF LAW

See EQUITY, 1.

MORTGAGE.

See EQUITY, 6.

MOTION FOR REHEARING.

Upon the rendition of a decree, a petition and motion for a rehearing was filed. At the succeeding term of the court an order was entered, granting a rehearing, which order was entered as of a previous term. The record contained no order showing the continuance of the motion and the petition for rehearing to the succeeding term. *Held*, that the presumption must be indulged, in support of the action of a court having jurisdiction of the parties and the subject matter — nothing to the contrary affirmatively appearing — that the facts existed which justified its action, and, therefore, that the court granted the application for a rehearing at the previous term. *Fowler* v. *Equitable Trust Co.*, 384.

MUNICIPAL CORPORATION.

See CONSTITUTIONAL LAW, A, 6;
CONTRACT, 1.

NATIONAL BANK.

1. A director of a national bank is not precluded from resignation within the year by the provision in Rev. Stat. § 5145 that when elected he shall hold office for one year, and until his successor is elected. *Briggs* v. *Spaulding*, 132.
2. Persons who are elected into a board of directors of a national bank, about which there is no reason to suppose anything wrong, but which becomes bankrupt in ninety days after their election, are not to be held personally responsible to the bank because they did not compel an investigation, or personally conduct an examination. *Ib.*
3. Directors of a national bank must exercise ordinary care and prudence in the administration of the affairs of a bank, and this includes something more than officiating as figureheads. they are entitled under the law to commit the banking business, as defined, to their duly authorized officers, but this does not absolve them from the duty of reasonable supervision, nor ought they to be permitted to be shielded from liability because of want of knowledge of wrong doing, if that ignorance is the result of gross inattention. *Ib.*
4. If a director of a national bank is seriously ill, it is within the power of the other directors to give him leave of absence for a term of one year, instead of requiring him to resign, and if frauds are committed during his absence and without his knowledge, whereby the bank suffers loss, he is not responsible for them. *Ib.*
5. Applying these principles to this case, *Held*, (1) That the defendant Cushing, having in good faith sold his bank stock and taken proper steps for its transfer, and orally tendered his resignation as a director to the

president of the bank, and ceased to act as such, cannot be held liable for the consequences of breaches of trust alleged to have been subsequently thereafterwards committed. (2) That Charles T Coit was guilty of no want of ordinary care in acting upon the leave of absence given him, and, having died while absent on that leave, his estate is not liable for losses alleged to have been incurred during such absence, and with which he had no affirmative connection (3) That the defendant Francis T. Coit, having accepted the office of director, when in infirm health, there being at the time others of the board of directors capable of attending to the concerns of the bank, and by reason of physical infirmity having failed to give the attention to the bank's affairs he otherwise would, his estate is held not liable for passive negligence on his part under all the circumstances disclosed in evidence. (4) That as no negligence is shown whereby the alleged losses can be said to have been affirmatively caused by the defendants Johnson and Spaulding, or either of them, they are not to be held responsible simply because, during the short period they were directors, they did not discover such losses and prevent them. *Ib.*

6. *Delano* v. *Butler* 118 U. S. 634, and *Aspinwall* v. *Butler*, 133 U. S. 595, affirmed and applied to a case where a shareholder in the bank, having subscribed her proportional share to the doubling of its capital and paid therefor, took out no certificate for the new stock and demanded back the money so paid. *Pacific National Bank* v. *Eaton*, 227
7. A subscription to stock in a national bank, and payment in full on the subscription and entry of the subscriber's name on the books as a stockholder, constitutes the subscriber a shareholder without taking out a certificate. *Ib.*
8. An action between a plaintiff and a national bank, and an action between the receiver of that bank as plaintiff and the plaintiff in the other action as defendant, are substantially suits between the same parties. *Butler* v. *Eaton*, 240.
9. A receiver of a national bank brought an action in a Circuit Court of the United States to recover the amount of an unpaid subscription to stock of the bank. The defendant set up a judgment in her favor in the state court on the same issue as an estoppel, and the Circuit Court held it to be an estoppel. That judgment of the state court being brought before this court by writ of error, was reversed here, and this court in the case from the Circuit Court, also brought here in error, *Held*, that the judgment of the Circuit Court should be reversed, and the cause remanded with directions to enter judgment for the receiver. *Ib.*
10. When a state bank, acting under a statute of the State, calls in its circulation issued under state laws, and becomes a national bank under the laws of the United States, and a judgment is recovered in a court of the State against the national bank upon such outstanding circulation, the defence of the state statute of limitations having been set

up, a Federal question arises which may give this court jurisdiction in error. *Metropolitan Bank* v. *Claggett*, 520.

11. The conversion of a state bank in New York into a national bank, under the act of the legislature of that State of March 9, 1865, (N. Y. Laws of 1865, c. 97,) did not destroy its identity or its corporate existence, nor discharge it as a national bank from its liability to holders of its outstanding circulation, issued in accordance with state laws. *Ib.*
12. The provisions in the statute of New York of April 11, 1859, (Laws of 1859, c. 236,) as to the redemption of circulating notes issued by a state bank and the release of the bank if the notes should not be presented within six years, do not apply to a state bank converted into a national bank under the act of March 9, 1865, and not "closing the business of banking." *Ib.*

See CORPORATION, 2.

NE EXEAT.

In the action at law upon the bond given in the *ne exeat* proceedings (No. 53) the court erred in ordering the amended pleas to be stricken from the files. *Griswold* v *Hazard*, 260.

See EQUITY, 3, 4.

OREGON.

See LOCAL LAW, 1.

PATENT FOR INVENTION.

1. Letters patent No. 86,296, granted to the New York Belting and Packing Company, as assignee of Dennis C. Gately, the inventor, January 26, 1869, for "improvements in vulcanized india-rubber packing," involved invention, and were valid. *Magowan* v. *New York Belting and Packing Co.*, 332.
2. The Gately packing explained in view of prior packings. *Ib.*
3. The fact considered, that that packing went at once into such an extensive public use as almost to supersede all packings made under other methods, and that it was put upon the market at a price from 15 to 20 per cent higher than the old packings, although it cost 10 per cent less to produce it. *Ib.*
4. If a patentee describes and claims only a part of his invention, he is presumed to have abandoned the residue to the public. *McClain* v. *Ortmayer*, 419.
5. Where a claim is fairly susceptible of two constructions, that one will be adopted which will preserve to the patentee his actual invention but if the language of the specification and claim shows clearly what he desired to secure as a monopoly, nothing can be held to be an infringement which does not fall within the terms which the patentee has himself chosen to express his invention. *Ib.*

6. The first claim in letters patent No. 259,700, issued June 20, 1882, to Edward L. McClain for a pad for horse-collars, when construed in accordance with these principles, is not infringed by the manufacture and sale of sweat pads for horse-collars under letters patent No. 331, 813, issued December 8, 1885. *Ib.*

7 Whether a variation from a previous state of an art involves anything more than ordinary mechanical skill is a question which cannot be answered by applying the test of any general definition. *Ib.*

8. The doctrine which prevails to some extent in England, that the utility of a device is conclusively proven by the extent to which it has gone into general use, cannot be applied here so as to control that language of the statute which limits the benefit of the patent laws to things which are new as well as useful. *Ib.*

9. In a doubtful case the fact that a patented article has gone into general use is evidence of its utility; but not conclusive of that, and still less of its patentable novelty. *Ib.*

10. Letters patent No. 267,011, issued May 13, 1884, to E. L. McClain for a pad fastening are void for want of novelty in the alleged invention. *Ib.*

11. On an accounting as to profits and damages, on a bill for the infringement of letters patent No. 58,294, granted to George W Richardson, September 25, 1866, for an improvement in steam safety-valves, the Circuit Court, confirming the report of the master, allowed to the plaintiff the entire profit made by the defendant from making and selling safety-valves containing the patented improvement, and this court affirmed the decree, on the ground that the entire commercial value of the defendant's valves was to be attributed to the patented improvement of Richardson. *Crosby Valve Co.* v. *Safety Valve Co.*, 441.

12. It was held that the plaintiff's valves of commerce all of them contained the improvements covered by the patent of Richardson, and that as the master had reported no damages, in addition to profits, the amount of profits could not be affected by the question whether the plaintiff did or did not use the patented invention. *Ib.*

13. It was proper not to make any allowance to the defendant for the value of improvements covered by subsequent patents owned and used by the defendant. *Ib.*

14. It was also proper not to allow to the defendant for valves made by the defendant and destroyed by it before sale, or after a sale and in exchange for other valves, which did not appear in the account on either side. *Ib.*

15. It was also proper not to allow a credit for the destroyed valves against the profits realized by the defendant on other valves. *Ib.*

16. Interest from the date of the master's report was properly allowed on the amount of profits reported by the master and decreed by the court. *Ib.*

17 In estimating, in a suit for the infringement of letters patent, the profits which the defendant has made by the use of the plaintiff's device, where such device is a mere improvement upon what was known before and was open to the defendant to use, the plaintiff is limited to such profits as have arisen from the use of the improvement over what the defendant might have made by the use of that or other devices without such improvement. *McCreary* v. *Pennsylvania Canal Co.*, 459.

18. An inventor took out letters patent for an invention intended to accomplish a certain result. Subsequently he took out a second patent, covering the invention protected by the first, and accomplishing the same result by a further improvement. While holding both patents, he sued to recover damages for the infringement of the second, without claiming to recover damages for the infringement of the first. *Held*, that he could recover only for the injuries resulting from use of the further improvement covered by the second letters, and that if no such injury were shown the defendant would be entitled to judgment. *Ib.*

19. The alleged invention protected by letters patent No. 50,591, granted October 24, 1865, to John H. Irwin, was a combination of old devices, each performing its old function and working out its own effect, without producing anything novel as the result of the combination, and was not patentable. *Adams* v. *Bellaire Stamping Co.*, 539.

20. When the sole issue in an action for the infringement of a patent is as to the patentable character of the alleged invention, it is not error to decline to instruct the jury that the fact that the machine had practically superseded all others was strong evidence of its novelty. *Ib.*

21. Reissued letters patent No. 9616, granted to Rodmond Gibbons March 22, 1881, on the surrender of letters patent No. 178,287 for an improvement in pantaloons, are void for want of patentable novelty in the invention claimed in it. *Patent Clothing Co.* v. *Glover*, 560.

22. Letters patent No. 208,258, granted September 24, 1878, to Henry M. Myers for an "improvement in handle sockets for shovels, spades and scoops" are void for want of novelty in the alleged invention covered by them, that invention having been anticipated by the "Ames California spade." *Myers* v. *Groom Shovel Co.*, 674.

PAYMENT.

1. Where the facts clearly show that a certain sum is due from one person to another, a release of the entire sum upon payment of part is without consideration, and the creditor may still sue for and recover the residue; but, if there be a *bona fide* dispute as to the amount due, that dispute may be the subject of a compromise. *Fire Insurance Association* v. *Wickham*, 564.

2. When a claim not yet due is prepaid in part by the debtor, such prepayment may operate as a discharge of the whole claim if both parties in-

tended it to be a consideration for such discharge, and whether both parties so intended is a question for the jury. *Ib.*

See CONTRACT, 8,
EQUITY, 5;
EVIDENCE, 6.

PLEADING.

See EVIDENCE, 4,
JURISDICTION, A, 5; C, 1, 2, 3.

POST OFFICE.

See EVIDENCE, 3.

PRACTICE.

1. There having been some irregularity in the submission of this case on the 15th of December, 1890, the court allows a resubmissson, and an additional brief is filed at its request, and it now adheres to its former decision, 137 U. S. 692, dismissing the writ for want of jurisdiction. *Caldwell* v. *Texas*, 209.
2. It is irregular for counsel for an appellant to file, with a motion to dismiss, the appeal papers stating the grounds on which the motion is made. *United States* v. *Griffith*, 212.
3. It being apparent that the proceedings in this court were for delay, No. 356 is affirmed with ten per cent damages, and No. 357 is dismissed, the court being without jurisdiction. *Gregory Consolidated Mining Co.* v *Starr*, 222.
4. In an action at law in a Circuit Court, judgment being rendered for the plaintiff, there was no bill of exception, no writ of error nor an allowance of appeal, but the defendant filed a supersedeas bond in which it was alleged that the defendant had "prosecuted an appeal or writ of error to the Supreme Court of the United States to reverse the judgment." The plaintiff moved for the revocation of the supersedeas created by the bond, which motion was denied. The motion in this court for leave to docket and dismiss the case was granted. *Tuskaloosa Northern Railway Co.* v. *Gude*, 244.
5. A decree in chancery in a Circuit Court having been brought up by writ of error instead of appeal, the defendant in error consented to the dismissal of the writ, and the court announced that if an appeal is seasonably taken the transcript of the record in this cause may be filed as part of return. *Williams* v. *Passumpsic Savings Bank*, 249.
6. An application by petition to a court of law, after its judgment has been reversed and a different judgment directed to be entered, to so change the record of the original judgment as to make a case materially different from that presented to the court of review, — there being no clerical mistake, and nothing having been omitted from the record of the original action which the court intended to make a matter of

record, — was properly denied. Such a case does not come within the rule that a court, after the expiration of the term, may, by an order, *nunc pro tunc*, amend the record by inserting what had been omitted by the act of the clerk or of the court. *Hickman* v. *Fort Scott*, 415.

7. In a suit in equity for the foreclosure of a railroad mortgage this court holds, on appeal by the purchaser at the foreclosure sale from a decree declaring the claim of an intervenor to be a lien upon the property, that the record is too meagre for it to determine whether there was any error in the decree. *Kneeland* v. *Luce*, 437.

8. A stipulation in this case that "testimony heretofore taken and filed in this cause" "may be used in any future litigation touching" the subject of the controversey in this suit is *held* not to import into the suit testimony from other records in this court; it not appearing by this record that such testimony was used by the appellant in the hearing below, or that the appellees were parties to the stipulation. *Ib.*

See EVIDENCE, 4,
JUDGMENT, 1,
JURISDICTION, A, 8, C, 1, 2, 3,
LOCAL LAW, 2;
MOTION FOR REHEARING,
NE EXEAT;
WITNESS.

PRINCIPAL AND AGENT.

See CONTRACT, 9;
CORPORATION, 2;
LIMITED LIABILITY, 5.

PRINCIPAL AND SURETY.

While adhering to the rule that any material change in a contract made by the principal without the assent of the surety, discharges the latter, the court is of opinion that the charges set up in this case as a reason for the discharge of the property of the surety were not material and did not operate to discharge it. *Cross* v. *Allen*, 528.

PROMISSORY NOTE.

See JURISDICTION, C, 1,
LOCAL LAW, 2.

PUBLIC LAND.

1. Congress, March 3, 1863, granted to Kansas every alternate section of land, designated by *odd* numbers for ten sections in width on each side, in aid of the construction of the following roads and each branch thereof *First*, a railroad and telegraph from the city of Leavenworth, Kansas, by the way of Lawrence and the Ohio City crossing of the Osage River, to the Southern line of the State in the direction of Galveston Bay, in Texas, with a branch from Lawrence by the valley of the Wakarusa River to the point on the Atchison, Topeka and Santa Fé Rail-

road, where that road intersects the Neosho River; *Second*, a railroad from the city of Atchison, Kansas, via Topeka, to the western line of that State, in the direction of Fort Union and Santa Fé, New Mexico, with a branch where the latter road crosses the Neosho, down said Neosho Valley to the point where the road, first named, enters the Neosho Valley. The act provided that in the case of deficiencies in place limits, it should "be the duty of the Secretary of the Interior to cause to be selected, for the purposes aforesaid, from the public lands of the United States nearest to tiers of sections above specified, so much land, in alternate sections, or parts of sections, designated by *odd* numbers, as shall be equal to such lands as the United States have sold, reserved or otherwise appropriated, or to which the rights of preëmption or homestead settlements have attached." The act also provided that the "sections and parts of sections of land which, by such grant, shall remain to the United States, within ten miles on each side of said road and branches" [that is, the *even*-numbered sections within the place or granted limits,] "shall not be sold for less than double the minimum price of the public lands when sold, nor shall any of said lands become subject to sale at private entry until the same shall have been first offered at public sale to the highest bidder, at or above the increased minimum price, as aforesaid. *Provided*, That actual and *bona fide* settlers, under the provisions of the preëmption and homestead laws of the United States, may, after due proof of settlement, improvement, cultivation and occupation, as now provided by law, purchase the same at the increased minimum price aforesaid. *And provided, also*, That settlers on any of said reserved sections, under the provisions of the homestead law, who improve, occupy and cultivate the same for a period of five years and comply with the several conditions and requirements of said act, shall be entitled to patents for an amount not exceeding eighty acres each, anything in this act to the contrary notwithstanding." By a subsequent act, July 16, 1866, for the benefit of the Union Pacific Railroad Company, Southern Branch, there was granted to the State for the use of that company, "every alternate section of land or parts thereof designated by odd numbers to the extent of five alternate sections per mile on each side of said road, and not exceeding in all ten sections per mile; but in case it shall appear that the United States have, when the line of said road is definitely located, sold any section or any part thereof, granted as aforesaid, or that the right of preëmption or homestead settlement has attached to the same, or that the same has been reserved by the United States for any purpose whatever, then it shall be the duty of the Secretary of the Interior to cause to be selected for the purposes aforesaid, from the public lands of the United States nearest to the sections above specified, so much land as shall be equal to the amount of such lands as the United States has sold, reserved or otherwise appropriated, or to which the

right of homestead settlement or preëmption has attached as aforesaid, which lands, thus indicated by the direction of the Secretary of the Interior, shall be reserved and held for the State of Kansas for the use of said company by the said Secretary for the purpose of the construction and operation of said railroad, as provided by this act." This last act provided also "That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement or other purpose whatever, be, and the same are hereby, reserved and excepted from the operation of this act, except so far as it may be found necessary to locate the route of said road through such reserved lands, in which case the right of way, two hundred feet in width, is hereby granted subject to the approval of the President of the United States. *And provided further*, That said lands hereby granted shall not be selected beyond twenty miles from the line of said road." The routes of the Leavenworth, Lawrence and Fort Gibson Railroad Company, which got the benefit of the first road named in the act of 1863, and the Union Pacific Railroad Company, Southern Branch, now the Missouri, Kansas and Texas Railroad Company, which succeeded also to the rights of the Atchison Company in respect to the road down the Neosho Valley, crossed each other in the valley, so that some of the *even*-numbered sections within the original place limits of the first-named road were within the indemnity limits of the latter road, and some *even*-numbered sections were within the common indemnity limits of both roads. *Held*, (1) That the *even*-numbered sections within the place limits of the Leavenworth, Lawrence and Fort Gibson Railroad were reserved to the United States by the act of 1863, and therefore were excepted from the grant in the act of 1866 and could not be patented to the Missouri, Kansas and Texas Railway Company to supply deficiencies in its place limits, (2) The *even*-numbered sections that were within the common indemnity limits of both roads could be used to supply deficiencies in the place limits of the Missouri, Kansas and Texas Railway Company, saving the rights acquired under the preëmption and homestead laws before the selection of such lands for purposes of indemnity. *United States* v. *Missouri, Kansas & Texas Railway*, 358.

2. The principle reaffirmed that title to indemnity lands does not vest in a railroad company, for the benefit of which they are contingently granted, but remains in the United States until they are actually selected and set apart under the direction of the Secretary of the Interior specifically for indemnity purposes. *Ib.*

3. Where a patent has been fraudulently obtained, and such fraudulent patent, if allowed to stand, would work prejudice to the interests or rights of the United States, or would prevent the Government from fulfilling an obligation incurred by it, either to the public or to an individual, which personal litigation could not remedy, there would be

an occasion which would make it the duty of the Government to institute judicial proceedings to vacate such patent. These principles equally apply where patents have been issued by mistake, and they are especially applicable where a multiplicity of suits, each one depending upon the same facts and the same questions of law, can be avoided, and where a comprehensive decree, covering all contested rights, would accomplish the substantial ends of justice. *Ib.*

4. *Kansas City, Lawrence &c. Railroad* v. *The Attorney General*, 118 U. S. 682, distinguished, and held to decide only the right of the Missouri, Kansas and Texas Company to idemnity from the *odd*-numbered sections within the overlapping indemnity limits of that company and the Leavenworth, Lawrence and Fort Gibson Company. *Ib.*

RAILROAD.

In a suit in equity brought against a railroad company, by a judgment creditor, for the sale of its road, because of insolvency, the road being covered by numerous mortgages, a receiver was appointed, on whose petition an order was made directing him to issue receiver's certificates to various parties, who claimed to be sub-contractors for building the road, and were about to sell certain shares of the stock of a company whose road formed part of the line of road and were held in pledge for the debts. The order directed that the certificates should be a first lien on a certain part of the road and should so state on their face. They were so issued. The trustee in the mortgages was a party defendant to the suit, when the receiver was appointed, and, by its counsel, consented to the issue of the certificates. The trustee also filed a foreclosure bill, in which a decree of foreclosure and sale was made, providing for the payment of "court and receiver's indebtedness," prior to the payment of the bondholders, and gave leave to the purchaser at the sale to appeal from any order directing the payment of claims as prior to the mortgage bonds. The road was sold, and the purchaser, under the order of the court, received the shares of stock referred to. The claims of the holders of the certificates were reported favorably by a master, and, on exceptions to the report, by the purchaser, for himself and other bondholders, the court allowed all the certificates as prior liens, and directed the purchaser to pay their amount into court: *Held*, (1) The issue of the certificates was proper; (2) Good faith required that the promise of the court should be redeemed, (3) The purchaser and the bondholders were estopped from setting up any claim against the priority of the certificates. *Kneeland* v. *Luce* (2), 491.

See CONTRACT, 8,
EQUITY, 6, 7,
JURISDICTION, E, 2;
RECEIVER, 2.

RECEIVER.

1. Whether a person holding the office of receiver can be held responsible for the acts of his predecessor in the same office is not a Federal question, but a question of general law. *McNulta* v. *Lochridge*, 327.
2. A receiver of a railroad, appointed by a Federal court, is not entitled under the act of March 3, 1887, c. 373, § 3, 24 Stat. 552, 554, to immunity from suit for acts done by his predecessor, without previous permission given by that court. *Ib.*
3. An adverse judgment of a state court, upon the claim of a receiver appointed by a Federal court, of immunity from suit without leave of the appointing court first obtained, is subject to review in this court. *Ib.*
4. Actions will lie by and against a receiver for causes of action accruing under his predecessor in office. *Ib.*

See EQUITY, 6;
RAILROAD.

RECEIPT.

See EVIDENCE, 6.

REGULATION OF COMMERCE.

See CONSTITUTIONAL LAW, A, 1, 2, 4, 5;
JURISDICTION, A, 13.

REMOVAL FROM OFFICE.

See COURTS OF THE UNITED STATES.

REMOVAL OF CAUSES.

Numerous judgments at law were rendered in the state court in favor of the same party, against the same defendant; in each case, the judgment was for less than five hundred dollars, but the aggregate of all the judgments was over three thousand dollars. After the close of the term, the defendant against whom the judgments were rendered, filed a petition in the same court for the annulment of the judgments upon the ground that, without negligence laches or other fault upon the part of the petitioner, they had been fraudulently obtained. Subsequently the petitioner filed a proper petition and bond for the removal of the case into the Circuit Court of the United States. The application was refused and the state court proceeded to final judgment. *Held*,

(1) Upon the filing of a proper petition and bond for the removal of a cause pending in a state court, such cause, if removable under the act of Congress, is, in law, removed so as to be docketed in the Circuit Court of the United States, notwithstanding the state court may refuse to recognize the right of removal,

(2) As all the judgments in law were held in the same right and against the same parties, and as their validity depended upon the same facts, the defendant therein, in order to avoid a multiplicity of actions, and the vexation and costs arising from numerous executions and levies, was entitled to bring one suit for a final decree determining the matter in dispute that was common to all the parties; and as, under the rules of equity, such a suit could be brought in a court of the United States, the aggregate amount of all the judgments sought to be annulled was the value of the matter in dispute, consequently, the cause was removable so far as the amount involved was concerned,

(3) A Circuit Court of the United States in the exercise of its equity powers, and where divers citizenship gives jurisdiction over the parties, may deprive a party of the benefit of a judgment fraudulently obtained by him in a state court, if the circumstances are such as would authorize relief by a Federal court if the judgment had been rendered by it and not by a state court, as a decree to that effect does not operate upon the state court, but upon the party;

(4) Where a suit in equity is, in its general nature, one of which a Circuit Court of the United States may rightfully take cognizance, upon removal, it is not for a state court to disregard the right of removal upon the ground simply that the averments of the petition or bill in equity are insufficient or too vague to justify a court of equity in granting the relief asked. It is for the Federal court, after the cause is docketed there, and upon final hearing, to determine whether, under the allegations and proof, a case is made which entitles the plaintiff to the relief asked. *Marshall* v. *Holmes*, 589.

RESCISSION OF CONTRACTS.

See EQUITY, 5;
LACHES.

SHIPS AND SHIPPING.

See LIMITED LIABILITY.

STATE COURTS.

See REMOVAL OF CAUSES.

STATUTE.

A. STATUTES OF THE UNITED STATES.

See CONSTITUTIONAL LAW, A, 3,
COURTS OF THE UNITED STATES,
CUSTOMS DUTY;
JURISDICTION, A, 3, 10, B, 1, 2, C, 8,
LIMITED LIABILITY, 2, 4, 6;
NATIONAL BANK, 1,
PUBLIC LAND, 1,
RECEIVER, 2.

B. STATUTES OF STATES AND TERRITORIES.

Illinois.	*See* TAX SALE, 3, USURY.
Kentucky.	*See* CONSTITUTIONAL LAW, A, 4.
Massachusetts.	*See* CONSTITUTIONAL LAW, A, 3.
New York.	*See* NATIONAL BANK, 11, 12.
Oregon.	*See* LIMITATION, STATUTES OF, 1, LOCAL LAW, 1.
Pennsylvania.	*See* CONSTITUTIONAL LAW, A, 1.
Texas.	*See* FRAUDULENT CONVEYANCE, LOCAL LAW, 2.
Virginia.	*See* CONSTITUTIONAL LAW, A, 5.

STATUTE OF FRAUDS.

See CONTRACT, 3, 4.

SUPERSEDEAS.

See PRACTICE, 4.

SURVIVAL OF ACTION.

See JURISDICTION, E, 2.

TAX AND TAXATION.

See CONSTITUTIONAL LAW, 1, 2, 3, 4, JURISDICTION, A, 13, 15.

TAX SALE.

1. Where a tax deed in Illinois is relied on as evidence of paramount title, it is indispensable that it be supported by a valid judgment for the taxes, and a proper precept authorizing the sale. *Gage* v. *Bani*, 344.
2. It is well settled in that State that a tax title is purely technical, and depends upon a strict compliance with the statute; and that the giving of the particular notice required by the statute is an indispensable condition precedent to the right to make a deed to the purchaser or his assignee. *Ib.*
3. The owner of land in Illinois, sold for the non-payment of taxes, or of special assessments, is entitled to be informed in the statutory notice whether the sale was for the non-payment of a tax, or of such an assessment; and a notice which informs him that the sale was made "for taxes and special assessments, authorized by the laws of the State of Illinois" is a defective notice. *Ib.*
4. The right of an occupant of land in Illinois, sold for the non-payment of taxes or special assessments, to personal notice of the fact of sale, before the time of redemption expires, is expressly given by the Constitution of Illinois, and is fundamental and upon a direct issue whether such notice was given, the owner testifying that he did not receive

notice, the evidence should be clear and convincing that it was given as required by law, before the tax title can be held to be paramount. *Ib.*

TEXAS.

See LOCAL LAW, 2.

TRUST.

A trust deed, covering real estate, provided that in the case of a sale by the trustee, at public auction, upon advertisement, all costs, charges and expenses of such advertisement, sale and conveyance, including commissions, such as were at the time of the sale allowed by the laws of Illinois to sheriffs on sale of real estate on execution, should be paid out of the proceeds. *Held*, (1) that this provision did not impose upon the borrower the burden of paying to a lender a solicitor's fee where a suit was brought for foreclosure; (2) that the commissions referred to in the deed are allowed only where the property is sold, upon advertisement, by the trustee, without suit. *Fowler* v. *Equitable Trust Co.*, 384.

See WILL.

TRUST SALE.

See TRUST.

USURY.

1. The question of usury, in a loan made in 1873 to a citizen of Illinois by a Connecticut corporation — the loan being evidenced by notes of the borrower payable in New York, and secured by mortgage upon real estate in Illinois, is to be determined by the laws of the latter State pursuant to its statute providing, in substance, that where any contract or loan shall be made in Illinois, or between citizens of that State and any other State or country, at a rate legal under the laws of Illinois, it shall be lawful to make the principal and interest payable in any other State or Territory, or in London, in which cases the contract or loan shall be governed by the laws of Illinois, unaffected by the laws of the State or country where the same shall be made payable. *Fowler* v. *Equitable Trust Co.*, 384.
2. It is settled doctrine in Illinois that the mere taking of interest in advance does not bring a loan within the prohibition against usury; but whether that doctrine would apply where the loan was for such period that the exaction by the lender of interest in advance would, at the outset, absorb so much of the principal as to leave the borrower very little of the amount agreed to be loaned to him is not decided. *Ib.*
3. A contract for the loan or forbearance of money at the highest legal rate is not usury in Illinois, merely because the broker who obtains a loan — but who has no legal or established connection with the lender as agent and no arrangement with the lender in respect to compensa-

tion for his services — exacts and receives, in addition to the interest to be paid to the lender, commissions from the borrower. *Ib.*

4. If a corporation of another State, through one of its local agents in Illinois, negotiates a loan of money to a citizen of the latter State, at the highest rate allowed by its laws, and the agent charges the borrower, in addition, commissions for his services pursuant to a general arrangement made with the company, at the time he became agent, that he was to get pay for his services as agent in commissions from borrowers, such loan is usurious under the law of Illinois, although the company was not informed, in the particular case, that the agent exacted and received commissions from the borrower. *Ib.*
5. In Illinois, when the contract of loan is usurious, the lender, suing the borrower for the balance due, can only recover the principal sum, diminished by applying as credits thereon all payments made on account of interest. In such cases, whatever the borrower pays on account of the loan goes as a credit on the principal sum. *Ib.*
6. A Connecticut corporation made in 1876 a loan of ten thousand dollars for five years at nine per cent to a citizen of Illinois, the loan being evidenced by note, secured by deed of trust on real estate in the latter State, providing that nothing contained in it should be so construed as to prevent a foreclosure by legal process, and that upon any foreclosure the corporation should recover in addition to the principal, interest and ordinary costs, a reasonable attorney's or solicitor's fee, not exceeding five per cent for the collection thereof. It was also stipulated in the deed, that the decree or order for foreclosure should direct and require that the expenses of such foreclosure and sale, including the fees of solicitor and counsel, be taxed by the court at a reasonable amount, and paid out of the proceeds of the sale. The highest rate allowed by the laws of Illinois at the time of the loan was ten per cent. The borrower paid the agent of the company a commission of $150 under such an arrangement as that referred to in the case of *Fowler* v. *Equitable Trust Co.*, 141 U. S. 384. *Held*, (1) that the payment of these commissions to the company's agent did not make the contract usurious, because if that sum was added to the nine per cent stipulated to be paid, the total amount of the interest exacted was less than the highest rate then allowed by law, (2) the stipulation in the deed of trust providing for the payment by the borrower, in addition to ordinary costs, of a reasonable solicitor's fee, not exceeding five per cent, for collection in the event of a suit to foreclose, did not make the contract usurious under the law of Illinois. *Fowler* v. *Equitable Trust Co.*, 411.

WAIVER.

See JURISDICTION, C, 3.

WARRANTY.

See CONTRACT, 7.

WILL.

A testator gave all his estate, real and personal, to his executors for the term of twenty years, "in trust, and for the uses, objects and purposes hereinafter mentioned," and authorized them to make leases not extending beyond the twenty years, and to lend money on mortgage for the same period, and, "after the expiration of the trust estate vested in my executors and trustees for the term of twenty years after my decease," devised and bequeathed one-fourth part of all his estate, subject to the payment of debts and legacies, to his widow, one-fourth to his daughter, one-fourth to his brother, and one-fourth to his nephew; gave certain legacies and annuities to other persons; directed his executors to pay a certain part of the income to his brother "until the final division of my estate, which shall take place at the end of twenty years after my decease, and not sooner;" that no part of his estate should "be sold, mortgaged (except for building) or in any manner encumbered, until the end of twenty years from and after my decease, when it may be divided or sold for the purposes of making a division between my devisees as herein directed," and also that, in the event of any of the legatees or annuitants being alive at the end of the twenty years, there should then be a division of all his estate, "anything herein contained to the contrary notwithstanding; and in such case my executors, in making division of the said estate, shall apportion each legacy or annuity on the estate assigned to my devisees, who are hereby charged with the payment of the same according to the apportionment of my said executors;" and further provided as follows: "It is my will that my trustees aforesaid shall pay the several gifts, legacies, annuites and charges herein to the persons named in this will, and that no creditors or assignees or purchasers shall be entitled to any part of the bounty or bounties intended to be given by me herein for the personal advantage of the persons named and therefore it is my will that, if either of the devisees or legatees named in my will shall in any way or manner cease to be personally entitled to the legacy or devise made by me for his or her benefit, the share intended for such devisee or legatee shall go to his or her children, in the same manner as if such child or children had actually inherited the same, and, in the event of such person or persons having no children, then to my daughter and her heirs." He also declared it to be his wish that W., one of his executors, should collect the rents and have the general supervision during the twenty years; and further provided that the share devised to his daughter should be conveyed at the expiration of the twenty years, for her sole use, to three trustees to be chosen before her marriage by herself and the trustees named in the will, and the net income be paid to her personally for life, and the principal be conveyed after her death to her children or appointees; and that, in the event of his wife's marrying again, the share devised to her should be held by his trustees for her sole use. *Held*, (1) That the powers con-

ferred and the trusts imposed were annexed to the office of executors, and that they took the legal title in fee, to hold until they had divided the estate, or the proceeds of its sale, among the devisees of the residue. (2) That an equitable estate in fee in one fourth of the residue of the estate vested in the brother and the nephew, respectively, from the death of the testator. (3) That the limitation over, in case of alienation, was intended to apply to the residuary devisees, but was void because repugnant to the estates devised. (4) That by the law of Illinois such an equitable estate could not be taken, at law or in equity, for the debts of the owner. (5) That a conveyance thereof by such owner, in consideration of an agreement of the grantee to buy up outstanding judgments against the grantor, and to sell the interest conveyed and pay one-half of the net proceeds to the grantor's wife, no part of which agreement was performed by the grantee, gave him no right which a court of equity would enforce. (6) That these conclusions were not affected by the following facts: The daughter was married ten years after the death of the testator, having first, by indenture with the trustees named in the will, appointed them to be trustees for the benefit of herself and her children. Just before the end of twenty years from the testator's death, a mortgagee of all the real estate agreed with the trustees under the will to postpone payment of the principal and to reduce the rate of interest of the mortgage debt, provided the whole estate should continue to be managed by W., and thereupon the testator's widow, brother, nephew, daughter and her husband, individually, and the widow, brother and W., as trustees of the daughter, made to W a power of attorney, reciting that by the will the testator devised his whole estate in trust for the period of twenty years, which was about to expire, and upon the termination of that trust to the widow, brother, nephew and daughter in equal parts, and that it was deemed advantageous to the devisees, as well as to the mortgagee, that the estate should continue to be managed as a whole, and therefore authorizing W to take possession, to collect rents, to pay taxes, debts against the estate, and expenses of repairs and management, and to sell and convey the whole or any part of the estate at his discretion. *Potter* v. *Couch*, 296.

WITNESS.

A court of the United States cannot order a plaintiff, in an action for an injury to the person, to submit to a surgical examination in advance of the trial. *Union Pacific Railway Co.* v *Botsford*, 250.

WRIT OF ERROR.

See PRACTICE, 5.